



**Attorney General
Betty D. Montgomery**

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April 20, 2000

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street S.W.,
Portals II Building
Washington, DC 20554

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Re: *In the Matter of Federal State Joint Board
on Universal Service, CC Docket No. 96-45;
and Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996, CC
Docket No. 96-98; Internal File No.
CCB/CPD No. 96-10.*

Dear Ms. Salas:

Enclosed please find the original and two copies of the comments of the Public Utilities Commission of Ohio in the above referenced case. Please return one time-stamped copy in the enclosed, stamped, self-addressed envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jodi J. Bair".

Jodi J. Bair
Assistant Attorney General
Public Utilities Section
180 E. Broad St., 7th Floor
Columbus, OH 43215

JJB/kja

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 21 2000

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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	CC Docket No. 96-98
)	
Implementation of the Local)	
Competition Provisions of the)	Internal File No:
Telecommunications Act of 1996.)	CCB/CPD No. 00-10

THE PUBLIC UTILITIES COMMISSION OF OHIO'S
COMMENTS ON ITS PETITION FOR WAIVER

INTRODUCTION

On April 7, 2000, the Public Utilities Commission of Ohio (Ohio Commission) filed a Petition requesting that the Federal Communications Commission (FCC) waive or extend its May 1, 2000 deadline in order to allow the Ohio Commission sufficient time to establish the deaveraged UNEs for non-rural carriers. The FCC's current rule 47 C.F.R. § 51.507(f) requires that State commissions establish deaveraged unbundled network element (UNE) pricing and interconnection rates by May 1, 2000. Based on the FCC's April 6, 2000 denial of GTE's request for a waiver of the May 1 deadline, the Ohio Commission hereby submits initial comments in support of its Petition. *See In the Matter of Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, Order on Reconsideration (Released April 6, 2000) ("*April 6 Order*"). The *April 6 Order*, which was received by the Ohio Commission after its own Petition was filed, forms the primary basis for these comments.

DISCUSSION

The Ohio Commission's Petition argued that certain states, including Ohio, may need additional time to implement the FCC's requirements regarding deaveraged UNEs for non-rural carriers. The Ohio Commission has issued orders establishing litigated deaveraged UNE rates for both the Cincinnati Bell Telephone Company (CBT) and Ameritech Ohio, but has not established final litigated TELRIC rates for Sprint-United or GTE (GTE).

Concerning deaveraged UNEs for Sprint-United, the Ohio Commission's Petition stated that its staff is currently executing its review of the company's proposed UNE rates and corresponding cost studies (Case No. 99-238-TP-UNC). Petition at 4. In reference to that statement, the Ohio Commission wishes to clarify that the scope of Case No. 99-238-TP-UNC is currently limited to establishing rates for reciprocal compensation for the transport and termination of local traffic.

The Ohio Commission would like to comment in support of its Petition by addressing certain aspects of the FCC's *April 6 Order*. In denying GTE's request for a waiver, the FCC emphasized that States were put on notice in November 1999 that the deaveraging rule would take effect by May 1, 2000. *April 6 Order* at ¶ 4. The *April 6 Order* went on to observe that "[m]any states have already created at least three deaveraged rate zones, some even while they were not obligated to do so under our rules." *Id.* In support of this observation, there is a footnote listing Ohio among the several states that "have already created at least three deaveraged rate zones." *Id.* Indeed, there is a valid argument supporting the *April 6 Order's* apparent interpretation that the Ohio Commission is already in compliance with the May 1, 2000 deadline.

Neither the FCC's rule, 47 C.F.R. §51.507(f), nor its prior orders on rate deaveraging specifically require that company-specific rate zones be established for each and every non-rural carrier by May 1, 2000. Instead, the rule requires only that "State commissions shall establish different rates for elements in at least three defined geographic areas within the state . . ." Given that the Ohio Commission has established three rate zones covering all of the major metropolitan areas in Ohio (through setting deaveraged rates for Ameritech and CBT), the *April 6 Order* was fully justified in listing Ohio as one of states that has "already created at least three deaveraged rate zones."

Thus, to the extent that the FCC considers anything other than granting an extension of time to the Ohio Commission, it should consider clarifying that Ohio has already satisfied the May 1, 2000 deadline and that the FCC expects Ohio to continue implementing geographic rate deaveraging. Either moving the May 1, 2000 deadline back or clarifying that Ohio has already fulfilled the deadline will not affect Ohio's ongoing support for, and implementation of, geographic rate deaveraging. Instead, the FCC's ruling will only affect the timing of full and final implementation of the deaveraging concept in recognition of the tremendous resources and efforts required to do so.

The *April 6 Order* also denied GTE's request for waiver because a delay of the deaveraging rule's effective date would impede the ability of competitive LECs to enter the local market. *April 6 Order* at ¶ 4. The Ohio Commission agrees that the promotion of local competition is the underlying purpose for rate deaveraging and is a guiding principle for implementation of the 1996 Act. In this regard, Ohio wishes to point out that competitive LECs in Ohio are well equipped to compete with all of the non-rural LECs including Sprint-United and GTE.

Relative to Sprint-United, the Ohio Commission has approved several negotiated interconnection agreements between Sprint and various carriers that contain deaveraged UNE rates.¹ It is also significant that, to date, no CLEC has sought to arbitrate any Sprint-United interconnection agreement.² Hence, although no litigated UNE rates or tariffs exist for Sprint-United, the competitive LECs wishing to enter Sprint-United's territory in Ohio can and are being served directly through these existing deaveraged UNE contract rates or by opting into those contract rates.

Relative to GTE, the UNE-platform and UNE-combination rates are listed as being deaveraged by Access Areas A, B and C, with the rates subject to determination in a subsequent GTE-specific litigated UNE rate proceeding.³ Moreover, the averaged UNE rates found in GTE's interconnection agreements are interim rates subject to true-up when the Ohio Commission sets litigated TELRIC rates in a GTE-specific UNE rate proceeding.⁴ Finally, of course, the vast majority of UNEs purchased in Ohio are sold

¹ See *Agreement Between Sprint and Rhythms Links*, PUCO Case No. 00-527-TP-NAG; *Agreement Between Sprint and New Edge Network*, PUCO Case No. 00-673-TP-NAG; *Agreement Between Sprint and Hyperion Comm.*, PUCO Case No. 99-437-TP-NAG; *Agreement Between Sprint and Cincinnati Bell Long Distance*, *Agreement Between Sprint and Dakota Services*, PUCO Case No. 99-991-TP-NAG; *Agreement Between Sprint and Data Telecom Corp.*, PUCO Case No. 99-992-TP-NAG; *Agreement Between Sprint and Northpoint Communications*, PUCO Case No. 99-1585-TP-NAG; *Agreement Between Sprint and Time Warner*, PUCO Case No. 98-272-TP-NAG; and *Agreement Between Sprint and Communications Opt*, PUCO Case No. 98-1034-TP-NAG.

² Voluntary agreements and negotiated results are strongly encouraged by the 1996 Act and arbitration by a State commission is only necessary if negotiations fail. *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721, 727 (1999). In that context, it would be inappropriate to create a blanket requirement that State commissions expend the substantial resources required to undertake a litigated TELRIC rate proceeding where all interconnecting carriers have voluntarily negotiated UNE rates that are mutually acceptable to both carriers. Although the Ohio commission believes it has clear authority to conduct a TELRIC proceeding for any incumbent LEC, it is opposed to a blanket Federal requirement in this regard.

³ See *eg. In the Matter of the Petition of AT&T Communications of Ohio, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with GTE North Inc.*, PUCO Case No. 96-832-TP-ARB, *GTE/AT&T Interconnection Agreement* (November 13, 1998), Schedule 14, Page 9.

⁴ *In the Matter of the Petition of AT&T Communications of Ohio, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with GTE North Inc.*, PUCO Case No. 96-832-TP-ARB, Supplemental Opinion and Order (December 22, 1998) at 7.

under the deaveraged rates previously established for Ameritech's and CBT 's UNEs. Thus, competitive LECs are well-positioned to compete on these bases in Ohio. Forcing the acceleration of company-specific TELRIC investigations ahead of significant competitive demand for such is placing form ahead of substance —and requires a substantial cost of time and resources that should not be taken lightly.


CONCLUSION

The Ohio Commission has demonstrated good cause for granting a waiver of the May 1, 2000 geographic deaveraging deadline, to the extent necessary. Accordingly, the FCC should either grant Ohio's Petition requesting an extension of time in which to complete our review of Sprint-United's and GTE's deaveraged UNEs or clarify that no waiver is needed.

Respectfully submitted,

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